UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 17 2008

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Akron
c/o Max Rothal, Director of Law
166 South High Street
Akron, Ohio 44308

Re: Notice of Violation and Finding of Violation
City of Akron (Akron, Ohio)

Dear Mr. Rothal:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) and Finding of Violation (FOV) to the City of Akron under Section 113(a)(1) and (a)(3) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating the Prevention of Significant Deterioration requirements under Section 165 of the CAA, 42 U.S.C. § 7475, Sections 502 and 503 of Title V of the CAA, 42 U.S.C. §§ 7661a-7661b, the Ohio State Implementation Plan, and the Standards of Performance for New Sources under Section 111 of the CAA, 42 U.S.C. § 7511, and 40 C.F.R. Subparts A and Db at your Akron, Ohio facility.

Section 113 of the Clean Air Act gives us several enforcement options.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference if you choose.

The contacts in this matter are Erik Hardin, Environmental Scientist, and Catherine Garypie, Associate Regional Counsel. You may call them at (312) 886-2402

and (312) 886-5825, respectively, to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

Cheryl L. Newton
Acting Director
Air and Radiation Division

cc: Robert Hodanbosi, Chief
Ohio Environmental Protection Agency

Lynn Malcolm, Administrator
Akron Regional Air Quality Management District

bcc: E. Hardin, ARD
C. Garypie, ORC
I. Saltzbart, EPA-OECA/OCE/AED
S. Burke, EPA – OECA/OCE/AED
J. Bickett, AUSA
P. Lee, USDOJ-ENRD/EES

United States Environmental Protection Agency
Region 5

IN THE MATTER OF:	)	
	)	
City of Akron	)	**NOTICE OF VIOLATION and**
Akron, Ohio	)	**FINDING OF VIOLATION**
	)	
Proceedings Pursuant to	)	**EPA-5-08-OH-31**
the Clean Air Act,	)	
42 U.S.C. §§ 7401 et seq.	)	
	)	

NOTICE AND FINDING OF VIOLATION

This Notice of Violation and Finding of Violation ("Notice") is issued to the City of Akron, Ohio for violations of the Clean Air Act ("CAA" or "the Act") at the district steam heating plant located at 226 Opportunity Parkway, Akron, Ohio. This Notice is issued pursuant to Section 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (a)(3).

U.S. Environmental Protection Agency finds that the City of Akron is violating Section 111 of the CAA and the Standards of Performance (NSPS) for Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. §§ 60.40b et seq., Subpart I of Part C of Title I of the CAA, the Ohio State Implementation Plan (SIP), and Sections 502 and 503 of the CAA, 42 U.S.C. § 7661a-7661b, as follows:

Statutory and Regulatory Background

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

1. Section 111(e) of the Act, 42 U.S.C. § 7411(e), provides that after the effective date of a standard of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate such source in violation of that standard.

2. Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), defines the term "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under Section 111 which will be applicable to such source.

3. Construction or modification is "commenced" when an owner or operator of a stationary source undertakes "a continuous program of construction or modification," or enters into a "contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." 40 C.F.R. § 60.2.

4. Section 111(a)(4) of the Act, 42 U.S.C. § 7411(a)(4), defines "modification," in pertinent part, as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source . . ." This definition requires that the physical or operational change result in an increase in the emission rate to the atmosphere of any pollutant for which a standard applies. 40 C.F.R. § 60.14(a). An emission rate increase is calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. 40 C.F.R. § 60.14(b).

5. 40 C.F.R. § 60.14(g) requires a modified stationary source to comply with all applicable standards within 180 days from the completion of any physical or operational change.

6. 40 C.F.R. § 60.7 requires, in pertinent part, that any owner or operator subject to the provisions of Part 60 provide written notification of the date of construction, the date of start up, the date of any physical or operational change to a NSPS affected facility, and the start up date of any continuous monitoring systems.

7. 40 C.F.R. § 60.8 states, in pertinent part, any owner or operator of an affected facility shall conduct a performance test(s) and furnish the Administrator a written report of the results within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start up.

8. EPA promulgated 40 C.F.R. Part 60 Subpart Db – Standards of Performance for Industrial Commercial Steam Generating Units (40 C.F.R. §§ 60.40b - 60.49b) on December 16, 1987. 52 Fed. Reg. 47842 (December 16, 1987).

9. 40 C.F.R. § 60.40b(a) states that the affected facility to which Subpart Db applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

10. 40 C.F.R. § 60.41b defines "steam generating unit" to mean a device that combusts any fuel or byproduct/waste to produce steam or to heat water or any other heat transfer medium.

11. 40 C.F.R. § 60.41b defines "spreader stoker steam generating unit" to mean a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

12. 40 C.F.R. § 60.41b defines "coal" to mean all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank, coal refuse, and petroleum coke. Coal derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal oil mixtures, and coal water mixtures, are also included in this definition.

13. 40 C.F.R. § 60.42b(a) provides that the owner or operator of a Subpart Db affected facility that combusts exclusively coal shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide (SO_2) in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and that contain sulfur dioxide in excess of the emission limit determined by a specified formula, which for coal results in 520 ng/J (or 1.2 lb/million Btu) heat input.

14. 40 C.F.R. § 60.43b(a) and (f) provide that no owner or operator of a Subpart Db affected facility which combusts exclusively coal shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter (PM) in excess of 22 ng/J (0.051 lb/million Btu) heat input or 20 percent opacity (6 minute average), except for one 6 minute period per hour of not more than 27 percent opacity.

15. 40 C.F.R. § 60.44b(a) provides that no owner or operator of a Subpart Db affected facility that combusts only coal from a spreader stoker steam generating unit shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (NO_X) (expressed as NO_2) in excess of 260 ng/J (0.60 lb/million Btu) heat input.

16. 40 C.F.R. § 60.47b requires the owner or operator of a Subpart Db affected facility which is required to comply with 40 C.F.R. § 60.42b to install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) for measuring SO_2 and either oxygen (O_2) or carbon dioxide (CO_2) both at the inlet and outlet of the SO_2 control device and record the output of the systems. As an alternative to operating CEMS, an owner or operator may elect to determine the average sulfur dioxide emissions and percent reduction.

17. 40 C.F.R. § 60.48b(b)(1) requires the owner or operator of a Subpart Db affected facility to install, calibrate, maintain, and operate a CEMS for measuring NO_X to the atmosphere, and record the output of the system.

18. 40 C.F.R. § 60.49b requires the owner or operator of a Subpart Db affected facility to maintain certain records and make certain reports to EPA.

Prevention of Significant Deterioration

19. On June 19, 1978, EPA promulgated the prevention of significant deterioration (PSD) of air quality standards pursuant to Part C of Title I of the Act. 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit. These regulations are codified at 40 C.F.R. § 52.21 in the 1999 edition of the C.F.R. Subsequent to 1980, the PSD regulations have been repeatedly revised.

20. The authority to implement the federal PSD regulations was delegated to the State of Ohio in a letter from EPA dated May 1, 1980, and thereby incorporated into the Ohio SIP. 40 C.F.R. § 52.1884 and 46 Fed. Reg. 9580 (January 29, 1981).

21. On October 10, 2001, EPA conditionally approved the Ohio SIP for PSD provisions for attainment areas. 66 Fed. Reg. 51570 (October 10, 2001). Ohio EPA's PSD program was finally approved as part of the SIP on January 22, 2003 (68 Fed. Reg. 2909). Ohio's PSD program is located in Ohio Administrative Code (OAC) 3745-31-01 through 3745-31-20. These rules mirror the federal PSD regulations codified in 40 C.F.R. § 52.21 in the 1999 edition of the C.F.R.

22. Facilities in Ohio were required to comply with the federal PSD program prior to October 10, 2001. Facilities in Ohio are required to comply with the Ohio PSD program on and after October 10, 2001. Revisions to the federal PSD program made on or after October 10, 2001 are not currently effective in Ohio.

23. 40 C.F.R. § 52.21(b)(1)(i)(a) (1999) defines a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Stationary sources with fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU per hour heat input are included among the 28 source categories.

24. 40 C.F.R. § 52.21(b)(2)(i) (1999) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

25. 40 C.F.R. § 52.21(b)(3)(i) (1999) defines "net emissions increase" as the amount by which the sum of the following exceeds zero:

    (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

26. 40 C.F.R. § 52.21(b)(21) (1999) defines "actual emissions" and states that for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit (PTE) of the unit on that date. 40 C.F.R. § 52.21(b)(21)(iv)(1999).

27. 40 C.F.R. § 52.21(b)(23) (1999) defines "significant" and states that in reference to NO_X, SO_2, PM, and carbon monoxide (CO), significant net emissions increase means an potential emissions rate that would equal or exceed 40 tons or more per year of NO_X, 40 tons or more per year of SO_2, 25 tons or more per year of PM, and 100 tons or more per year of CO. 40 C.F.R. § 52.21(b)(23)(i) (1999).

28. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n) (1999).

29. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21(1999) who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1) (1999).

30. 40 C.F.R. § 52.21(i) (1999) prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r), which include, inter alia, that a source subject to PSD regulations undergo a control technology review, install Best Available Control technology (BACT), and conduct air quality modeling. 40 C.F.R. §§ 52.21(j)-(r) (1999).

Requirements for SIP Permits to Install

31. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the maintenance, implementation and enforcement of the National Ambient Air Quality Standards (NAAQS). Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

32. Section 161 of the Act requires that each applicable SIP contain emission limitations and such other measures as may be necessary to prevent significant

deterioration (PSD) of air quality in each region designated as attainment or unclassifiable. 40 C.F.R. 51.165 and 51.166 contain the requirements for a PSD permitting program.

33. EPA originally approved the Ohio Environmental Protection Agency's permit to install (PTI) rules, OAC 3745-31, as part of the federally enforceable Ohio SIP on October 31, 1980 (45 Fed. Reg. 72119). Since then, EPA has approved several revisions to OAC 3745-31 into the federally enforceable SIP.

34. The most recent revisions to OAC 3745-31 include Ohio EPA's rules for the PSD permitting program in its approved SIP. The PSD portion of Ohio's SIP consists of OAC sections 3745-31-11 to 3745-31-20. The PSD portion of Ohio's SIP also includes general provisions applying to both attainment and nonattainment areas in the form of OAC sections 3745-31-01 to 3745-31-10.

35. OAC Rule 3745-31-02(A) states that no person shall cause, permit, or allow the installation of a new source of air pollutants or allow the modification of an air containment source without first obtaining a PTI from the director of the Ohio EPA.

36. OAC 3745-31-05(A)(2) provides that the director shall issue a permit to install if he determines, among other things, that the modification will not result in a violations of applicable laws such as those in 3745-31-10 to 3745-31-20 containing requirements pertaining to installation of major modifications in attainment areas or NSPS.

37. OAC 3745-31-05(A)(3) states that the director of the Ohio EPA will issue a PTI only if he determines that the installation or modification and operation of the air contaminant source will employ best available technology (BAT).

38. OAC 3745-31-15(D) states that the owner or operator of a new major modification shall apply best available control technology (BACT) for each regulated air pollutant that would be a significant net emissions increase at the stationary source.

39. OAC 3745-31-16(B) states that any owner or operator of a proposed major stationary source or major modification shall demonstrate that allowable emissions increases from the proposed major stationary source or major modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of: (1) Any national ambient air quality standard; or (2) Any applicable maximum allowable increase over the baseline concentration (allowable increment) in any attainment area.

Requirements for Title V Operating Permits

40. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

41. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.

42. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit issued under a Part 70 program.

43. EPA fully approved the Ohio Title V program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V permit requirements are codified at OAC 3745-77.

44. OAC 3745-77-02(A) prohibits operation of a source subject to Title V permitting requirements without a permit issued under Chapter 3745-77. OAC 3745-77-02(A)(1) requires that each Title V permit shall include emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance.

45. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the CAA, or any rule promulgated, issued or approved under Title V of the CAA.

Factual Background

Boiler 32 – City of Akron Facility

46. The City of Akron owns a district steam heating plant (the facility) at 226 Opportunity Parkway, Akron, Ohio. The City of Akron owns the facility and leases it to Akron Thermal. Akron Thermal operates the facility. This facility consists of the Akron Recycle Energy Systems (RES) Facility and the former B.F. Goodrich powerhouse, also known as the Annex Facility, which is located directly across the Ohio and Erie Canal from the RES Facility.

47. Five boilers with a combined heat input of 1027 million Btu/hr are operated at the facility. Included among these five boilers is Boiler #32 (Ohio EPA identification number B001), a 220 million BTU/hr heat input capacity spreader stoker coal fired boiler equipped with a multiclone and a two field electrostatic precipitator. Boiler #32 is located at the Annex Facility.

48. Boiler #32 meets the definition of "steam generating unit" in 40 C.F.R. § 60.41b and has a heat input capacity greater than 100 million BTU/hr.

49. Boiler #32 meets the definition of "spreader stoker steam generating unit" in 40 C.F.R. § 60.41b. Boiler #32 is fired with "coal" as defined in 40 C.F.R. § 60.41b.

50. Boiler #32 was shutdown in or about November 1988. This shutdown was intended to be permanent.

51. After 1988, Boiler #32 was not maintained as necessary to keep it operational. As a result, it deteriorated to the point where it was inoperable.

52. In 1995, several estimates were prepared for reactivating Boiler #32. These estimates indicate that major work would be required to reactivate Boiler #32, taking several months to complete and costing several million dollars.

53. The City of Akron and Akron Thermal have entered into a series of agreements regarding the plant:

    a. August 4, 1995, Interim License and Operating Agreement granting Akron Thermal access to the Annex Facility and allowing Akron Thermal to conduct all work required to convert Boiler #32 to a coal-fired boiler.

    b. November 4, 1995, Addendum to the August 5, 1995 Interim License and Operating Agreement, granting Akron Thermal access to the RES Facility and allowing Akron Thermal to operate and maintain the RES Facility.

    c. August 15, 1997, Operating Lease Agreement under which Akron Thermal rents the RES Facility and the Annex Facility from the City of Akron, agrees to operate the plant, and is entitled to all revenues and profits from the plant.

    d. August 15, 1997, Asset Purchase Agreement under which Akron Thermal may elect to purchase and the City of Akron may elect to sell the plant.

54. A reactivation project was conducted on Boiler #32 between August 4, 1995, and November 4, 1995. Boiler #32 began operating shortly thereafter.

55. As a result of the 1995 Boiler #32 reactivation project, the maximum emission rate of SO_2, PM, and NO_X to the atmosphere from Boiler #32, expressed in kg/hr, each increased.

56. The 1995 Boiler #32 reactivation project caused a significant net emission increase of SO_2 and NO_X each greater than 40 tons per year, PM greater than 25 tons per year, and CO greater than 100 tons per year. In addition, the facility did not have any contemporaneous and creditable emission decreases at the time of the reactivation project.

57. The facility meets the definition of "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a), because it has fossil fuel boilers that have a combined heat input greater than 250 million BTU/hr, and it has the potential to emit in excess of 100 tons of NO_X, CO, and SO_2 per year.

58. The facility is subject to the PSD regulations in the Ohio SIP, and the requirements to obtain PSD permits to install incorporating such PSD requirements, as required by the CAA and the Ohio SIP rules.

59. The facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of NO_X, CO, and SO_2 per year.

60. The State of Ohio issued a Title V permit to Akron Thermal on February 4, 1999.

61. Boiler #32 is not equipped with the pollution control equipment necessary to comply with the NSPS SO_2 standards in 40 C.F.R. §§ 60.42b(a) and the NSPS NO_X standards in 60.44b(a).

62. Boiler #32 is not equipped with a NO_X or SO_2 CEMS.

Boilers 1 and 2 – City of Akron Facility

63. PTI number 16-02294 (the PTI) was issued by Ohio EPA on December 16, 2003, to Akron Thermal, and it authorized the burning of up to 15.5% tire-derived fuel (TDF) with waste wood in Unit #1 and Unit #2. The PTI established identical limits for SO_2, PM, sulfuric acid mist (H_2SO_4), and hydrogen chloride (HCl) for each boiler. These limits, along with their regulatory authority are provided in Table 1.

Table 1

Pollutant	Emission Limit	Regulatory Authority (Ohio SIP Rule)
PM	0.08 lb/mmBtu	3745-31-05(A)(3)
HCl	0.86 lbs/hr	3745-31-05(A)(3)
SO_2	0.24[1] lb/mmBtu	3745-31-05(A)(3) and 3745-31-16(B)
H_2SO_4	0.053 lb/mmBtu	3745-31-05(A)(3) and 3745-31-16(B)

64. The conversion from burning solely wood waste to burning a mixture of wood waste and TDF was determined to be a major modification for SO_2 and H_2SO_4 pursuant to PSD rules and triggered the requirements of OAC 3745-31-11 through 3745-31-20. Included among these is the requirement to apply BACT and to conduct an air quality modeling analysis.

65. Pursuant to the PTI, Ohio EPA has determined BACT for SO_2 and H_2SO_4 to be restrictions on the quantity of TDF burned in the boilers. For Phase I, this restriction was set by Ohio EPA at 15.5% TDF with waste wood.

66. The emission limitations for SO_2 and H_2SO_4 identified in Table 1 were established by Ohio EPA pursuant to OAC 3745-31-16(B) to ensure that this major modification does not cause an increase in emissions that would cause a violation of the allowable increments provided in OAC 3745-31-11.

67. The emission limitations for SO_2, H_2SO_4, PM and HCl identified in Table 1 were established by Ohio EPA as BAT pursuant to OAC 3745-31-05 (A) (3).

68. Pursuant to Part III Term A.V.1 of the PTI, Akron Thermal was required to conduct EPA standard reference method emissions testing of PM, SO_2, HCl, and H_2SO_4 within 3 months after start-up. These emission tests are required to be conducted at the maximum TDF feed rate.

69. Akron Thermal's Title V operating permit (the Title V permit) was renewed January 30, 2004. Upon renewal, all requirements of the PTI were incorporated the Title V permit. This includes the emission limits identified in Table 1.

70. Akron Thermal commenced the combustion of TDF with wood waste in Units #1 and #2 on January 30, 2005.

1 This limit is to increase to 0.31 lbs/mmBtu under Phase II of the PTI.

71. In accordance with the PTI, Akron Thermal conducted emissions tests using EPA standard reference methods on Unit #1 and Unit #2 on October 12 and 13, 2004, respectively. The results of these tests are shown in Table 2.

Table 2

Pollutant	Requirement	Unit #1	Unit #2
TDF Feed	15.5%	**10.2%**	**9.8%**
PM	0.08 lb/mmBtu	0.04 lb/mmBtu	**0.09 lb/mmBtu**
SO_2	0.24 lb/mmBtu	0.24 lb/mmBtu	**0.33 lb/mmBtu**
H_2SO_4	0.053 lb/mmBtu	**0.073 lb/mmBtu**	0.042 lb/mmBtu
HCl	0.86 lbs/hr	**1.5 lb/hr**	0.66 lb/hr

Failed requirements and limits are in **Bold**

72. The emissions test conducted October 12, 2004, showed Unit #1 to be emitting in excess of the emission limits for HC1 and H_2SO_4 contained in the PTI and the Title V permit. Additionally, Unit #1 was not tested at the maximum TDF feed rate of 15.5%.

73. The emissions test conducted October 13, 2004, showed Unit #2 emitting in excess of the emission limits for PM and SO_2 contained in the PTI and the Title V permit. Additionally, Unit #2 was not tested at the maximum TDF feed rate of 15.5%.

74. On February 23 and 24, 2005, Akron Thermal conducted a retest on Unit #1 and Unit #2 respectively using EPA standard reference methods. The results of this test are shown in Table 3.

Table 3

Pollutant	Requirement	Unit #1	Unit #2
TDF Feed	15.5%	**11.0%**	**11.1%**
PM	0.08 lb/mmBtu	---	0.04 lb/mmBtu
SO_2	0.24 lb/mmBtu	---	**0.28 lb/mmBtu**
H_2SO_4	0.053 lb/mmBtu	0.029 lb/mmbtu	0.010 lb/mmBtu
HCl	0.86 lb/hr	**1.77 lbs/hr**	**3.90 lb/hr**

Failed limits and requirements are in **Bold**

75. The emissions test conducted February 23 and 24, 2005, showed Unit #1 to be emitting in excess of the emission limits for HCl contained in the PTI and the Title V permit. Additionally, Unit #1 was not tested at the maximum TDF feed rate of 15.5%.

76. The emissions test conducted February 23 and 24, 2005, showed Unit #2 emitting in excess of the emission limits for SO_2 and HCl contained in the PTI and the Title V permit. Additionally, Unit #2 was not tested at the maximum TDF feed rate of 15.5%.

Violations

77. The 1995 Boiler #32 reactivation project conducted at the City of Akron facility triggered NSPS "modification" provisions in 40 C.F.R. § 60.14. As a result, Boiler #32 is subject to 40 C.F.R. Part 60 Subparts A and Db.

78. The City of Akron failed to notify EPA of the reactivation project, which resulted in modification of Boiler #32, in violation of 40 C.F.R. § 60.7.

79. The City of Akron failed to conduct a performance test on Boiler #32 within 180 days after the reactivation project and furnish the EPA with a written report of the results, in violation of 40 C.F.R. § 60.8.

80. The City of Akron has failed to demonstrate continuous compliance with NSPS SO_2 and NO_X emission limits.

81. Boiler #32 is not equipped with a properly installed, calibrated, maintained, and operated CEMS for measuring SO_2 and either O_2 or CO_2, in violation of 40 C.F.R. § 60.47b.

82. Boiler #32 is not equipped with a properly installed, calibrated, maintained, and operated CEMS for measuring NO_X, in violation of 40 C.F.R. § 60.48b(b)(1).

83. The City of Akron has not maintained the necessary records or made the necessary reports to the EPA required by 40 C.F.R. § 60.49b.

84. The violations in Paragraphs 77 through 83 continue from at least the date on which the reactivation project started through the present until such time as the City of Akron complies with the applicable provisions of 40 C.F.R. Subparts A and Db.

85. The 1995 Boiler #32 reactivation project caused emissions of SO_2, NO_X, PM, and CO to increase above the significance level for each pollutant, resulting in a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(1999).

86. The City of Akron failed to obtain a PSD permit or undergo PSD review, including applying BACT, prior to beginning actual construction, in violation of 40 C.F.R. Part 52(1999).

87. The City of Akron failed to obtain a permit to install or undergo PSD review, including applying BACT, prior to allowing the modification without first obtaining a permit to install from the director, in violation of OAC Chapter 3745-31.

88. The violations noted in paragraphs 85 through 87 exist from at least the date of start of construction and continue until the appropriate permits are obtained and the necessary pollution control equipment is installed and operated.

89. The City of Akron failed to obtain a Title V permit that assures compliance with all applicable requirements of the CAA prior to operating a source subject to Title V permitting requirements, in violation of the Section 504 of the CAA and 40 C.F.R. § 70.1(b).

90. The City of Akron failed to obtain a Title V permit that includes emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements, prior to operating a source subject to Title V permitting requirements in violation of OAC 3745-77-02(A)(1).

91. The violations noted in paragraphs 89 and 90 exist from at least November 4, 1995, the date on which construction was complete and operation of Boiler #32 began and continues until the City of Akron obtains a Title V permit that assures compliance with all applicable requirements of the CAA.

92. During the EPA standard reference method emissions tests conducted on October 12, 2004, and again on February 23, 2005, Unit #1 at the City of Akron's facility was shown to be in violation of the HCl emission limit in Part III, Term A.I.1 of the PTI and the Title V permit.

93. The violation noted in paragraph 92 exists from the date the City of Akron's facility commenced the combustion of TDF with wood waste in Unit #1, and will continue until the City of Akron establishes that Unit #1 is in continuous compliance with the HCl emission limit contained in the PTI and the Title V permit.

94. During the EPA standard reference method emissions test conducted on October 12, 2004, Unit #1 at the City of Akron's facility was shown to be in violation of the H_2SO_4 emission limit in Part III, Term A.I.1 of the PTI and the Title V permit.

95. During the EPA standard reference method emissions test conducted on October 13, 2004, and again on February 24, 2005, Unit #2 at the City of Akron's

facility was shown to be in violation of the SO_2 emission limit in Part III, Term A.I.1 of the PTI and the Title V permit.

96. The violation noted in paragraph 95 exists from the date the City of Akron's facility commenced the combustion of TDF with wood waste in Unit #2, and will continue until the City of Akron establishes that Unit #2 is in continuous compliance with the SO_2 emission limit contained in the PTI and the Title V permit.

97. During the EPA standard reference method emissions test conducted on October 13, 2004, Unit #2 at the City of Akron's facility was shown to be in violation of the PM emission limit in Part III, Term A.I.1 of the PTI and the Title V permit.

98. During the EPA standard reference method emissions test conducted on February 24, 2005, Unit #2 at the City of Akron's facility was shown to be in violation of the HC1 emission limit in Part III, Term A.I.1 of the PTI and the Title V permit.

99. The violation noted in paragraph 98 exists from February 24, 2005, and will continue until the City of Akron establishes that Unit #2 is in continuous compliance with the HCl emission limit contained in the PTI and the Title V permit.

100. As of the date of this notice, the City of Akron has not conducted an emissions test of PM, SO_2, HC1 and H_2SO_4 at the maximum TDF feed rate of 15.5%, in violation of Part III Term A.V.1 of the PTI. This violation exists from 3 months after the date the City of Akron's facility began combustion of TDF with wood waste in Unit #1 and Unit #2, and will continue until the City of Akron conducts an emission test at a TDF feed rate of 15.5%.

101. The City of Akron's facility operation in violation of its Title V permit, as noted in paragraphs 92 through 100, constitutes a violation of section 502 of the CAA and of 40 C.F.R. § 70.7(b).

9/17/08
Date

Cheryl L. Newton
Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5- , by Certified Mail, Return Receipt Requested, to:

City of Akron
c/o Max Rothal, Director of Law
166 South High Street
Akron, OH 44308

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. 1049
Columbus, Ohio 43216 1049

and

Lynn Malcolm, Administrator
Akron Regional Air Quality Management District
146 South High St. Room 904
Akron, Ohio 44308

On the 18 day of Sept, 2008.

Loretta Shaffer

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 1020